

EXHIBIT D

Sharad Tak

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ABILITY INSURANCE COMPANY,

Plaintiff,

v.

ST PAPER, LLC 1:20-cv-03851 (GBD)

Defendant. Civil Action No.:

- - -

Tuesday, May 18th, 2021

- - -

Video deposition of SHARAD TAK, taken pursuant to notice, was held via BlueJeans, commencing at 10:09 a.m., on the above date, before Jessica Routhenstein, a Certified Court Reporter and Notary Public in the Commonwealth of Pennsylvania.

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- - -

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Sharad Tak

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1 it.

2 Q. So do you have -- would ST Paper have a
3 copy of the assignment agreement between Goldman
4 Sachs and Macquarie?

5 A. Probably not.

6 Q. Was ST Paper current on its payments on
7 the Goldman Sachs loan before the assignment to
8 Macquarie Bank?

9 A. No, no.

10 Q. Okay. Do you have documents that
11 evidence the payment history of that loan?

12 A. Whatever was there we have provided it.
13 As I mentioned to you already, for two years or
14 two and a half years our records were kept at
15 Mr. Van Den Heuvel's office and ST Paper never
16 received those records, but we probably have the
17 documents provided by Goldman Sachs or a bank,
18 which I think had been provided to you, what --
19 what loans we paid back or what amounts we paid
20 back for interest or principal.

21 Q. Okay. Well, we are going to review our
22 records and we might make a further request for
23 those documents.

24 So you said ST was not -- Paper was not
25 current on its payments to Goldman Sachs before

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1 this assignment. Why was ST not current?

2 A. ST Paper was not making enough money to
3 make the payments to Goldman Sachs and that is
4 why the loan was -- there was default on the
5 loan. And Goldman at that time decided to sell
6 the company, ST Paper, and get out of this
7 loan.

8 Q. That Goldman decided to what the
9 company? I thought you said --

10 A. Right, sell the company, sell ST
11 Paper.

12 Q. So Goldman decided to sell ST Paper to
13 Macquarie Bank?

14 A. Goldman decided to sell it to anyone who
15 was willing to buy the company and get their
16 debt paid, whatever money they can get paid. So
17 they hired -- I think they hired an investment
18 banker to look at the possible sale of the
19 company.

20 - - -

21 (Technical difficulties; reporter
22 gives instruction.)

23 - - -

24 THE VIDEOGRAPHER: Time is 12:46
25 p.m., off the record.

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1 very clear and sometimes you are not.

2 MS. CHUDEREWICZ: So strange. Okay.

3 Let me know, can you hear me now?

4 THE WITNESS: Yes, I can.

5 BY MS. CHUDEREWICZ:

6 Q. You have owned many companies throughout
7 your career, correct?

8 A. Yes.

9 Q. Is it usual for a lender to make a loan
10 and not require payment for 26 years?

11 A. It depends on the note. These are very
12 specific NTC loans and they are usually 30 years
13 long. That's what I was told by U.S. Bank when
14 we borrowed the money.

15 Q. So if they are usually 30 years loans,
16 would there still usually be an obligation to
17 pay interest on the loan?

18 A. Yes, there are. It depends on what has
19 been negotiated. Most of that --

20 (Technical difficulties; reporter gives
21 instruction.)

22 A. Infrastructure loans are 30 to 45 years
23 long.

24 BY MS. CHUDEREWICZ:

25 Q. So on those large infrastructure loans,

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1 A. Yes.

2 Q. Do you have documentation evidencing
3 that?

4 A. We may have our bank documents,
5 although, they were made I guess by electronic
6 transfer. Otherwise, we may have a letter or
7 something from the bank of these CDs, because we
8 have no default letter, no letter of payments
9 being made. So you can infer that all these
10 payments were made.

11 Q. And you can infer that the quarterly
12 payments were made, did you say, because there
13 are none -- ST Paper is not in default on any of
14 them; is that correct?

15 A. ST Paper was not in default on any of
16 those until they were paid off and until the
17 deal closed, yes, yeah.

18 Q. We are going to request documentation
19 regarding the payments of those quarterly
20 payments under the various loans.

21 Going to switch gears a little bit now.

22 I am going to show you a document that
23 is being marked as Exhibit 28.

24 - - -

25 (Whereupon, Exhibit 28 was marked for

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1 identification.)

2 - - -

3 BY MS. CHUDEREWICZ:

4 Q. And this is an email that was sent from
5 Mr. Van Den Heuvel to you and Alok Mathur.

6 Do you see that?

7 A. Yes.

8 Q. Okay. This email was sent on
9 October 29th, 2006.

10 Do you see that?

11 A. Yes.

12 Q. The gentleman that you were talking to
13 us about earlier, I believe you said his name
14 was Alok; was that correct?

15 A. Yes.

16 Q. And is this the person that you were
17 referring to?

18 A. Yes.

19 Q. There's an attachment to this email and
20 it is labeled "st ebitda".

21 Do you see that?

22 A. Yes.

23 Q. And what is ebitda?

24 A. Let me see the attachment.

25 Q. Sure. Other than seeing the attachment,

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1 do you understand what the term ebitda means?

2 A. Yes.

3 Q. And what does it mean?

4 A. It's earnings before taxes and --
5 interest.

6 - - -

7 (Technical difficulties; reporter
8 gives instruction.)

9 - - -

10 THE WITNESS: This is an accounting
11 term used for ebitda before interest, taxes,
12 depreciation and amortization.

13 BY MS. CHUDEREWICZ:

14 Q. And what does this attachment show?

15 A. This attachment shows that Mr. Van Den
16 Heuvel represented that this was the ebitda for
17 the mill before ST Paper would purchase it and
18 do all the improvements.

19 Q. And there are two columns that are
20 labeled Ron's, which I presume is Mr. Van Den
21 Heuvel, and there's another column for Alok, who
22 was your consultant, correct?

23 A. Correct.

24 Q. And what are these two columns
25 comparing?

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1 A. These two columns are comparing the
2 ebitda for the mill, OFTI. The one is what
3 Mr. Van Den Heuvel is saying it is, the ebitda
4 is, part time of the production, and other one
5 is our consultant Alok Mathur is presenting that
6 this is what he found after making some
7 adjustments.

8 Q. And where did Mr. Mathur get his number
9 to do his ebitda calculations?

10 A. I have explained earlier that Alok also
11 provided the books by Mr. Van Den Heuvel and he
12 had visited and spent many days this Mr. Van Den
13 Heuvel's office and that's where he got his
14 information.

15 - - -

16 (Technical difficulties; reporter
17 gives instruction.)

18 - - -

19 MS. CHUDEREWICZ: Visited and spent
20 many days. Jessica, did you understand that?

21 THE REPORTER: I understood you,
22 yes.

23 MS. CHUDEREWICZ: Okay. I don't
24 want to be testifying, but that's what I heard
25 Mr. Tak say.

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1 THE WITNESS: Yes, that's correct.

2 BY MS. CHUDEREWICZ:

3 Q. And why did Mr. Van Den Heuvel send you
4 this ebitda calculation?

5 A. Because we were doing the dividends and
6 we were asking them questions besides that
7 Goldman Sachs wanted to know what the ebitda was
8 for the mill for which they were going to
9 provide financing of 65, 70 million dollars.

10 Q. Other than this document, do you have
11 any other documents which allegedly show
12 representations by Mr. Van Den Heuvel or OFTI --

13 A. If I remember --

14 Q. Sorry. -- regarding the capacity of
15 the mill before the closing?

16 A. As I told earlier in my testimony that
17 purchase agreement had some exhibits attached to
18 it and some exhibits may -- may have these
19 numbers, but I will have to go and check back on
20 it, and you can look at it yourself too.

21 Q. As part of ST's counterclaims in this
22 litigation, ST contends that there were expenses
23 of OFTI from preclosing that required payment,
24 correct?

25 A. That's correct.

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1 Q. And if we look at the counterclaim one.

2 MS. CHUDEREWICZ: I will mark this
3 as Exhibit 29.

4 - - -

5 (Whereupon, Exhibit 29 was marked for
6 identification.)

7 - - -

8 BY MS. CHUDEREWICZ:

9 Q. So I will represent to you that this is
10 an amended answer and affirmative defenses on
11 behalf of ST Paper, LLC that ST Paper has
12 requested be filed, but when I looked on the
13 document this morning it hasn't yet been filed,
14 but I understand that this is the latest
15 pleading from ST Paper that we have received,
16 although it has not been filed.

17 And if we look at the counterclaims,
18 which are at the back of the document -- so this
19 is the first counterclaim that I wanted to look
20 at with you.

21 MR. SMIES: Just to clarify, these
22 are affirmative defenses, right, not a
23 counterclaim?

24 MS. CHUDEREWICZ: Yes. And I am
25 sorry about that misrepresentation. You are

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1 correct. They are affirmative defenses.

2 MR. SMIES: Thanks.

3 BY MS. CHUDEREWICZ:

4 Q. So if we look at the affirmative defense
5 that is here in paragraph 4, it talks about that
6 any recovery by the plaintiff in this action
7 pursuant to note 1 is offset by amounts owed as
8 a result of Oconto Falls Tissue, Inc.'s
9 obligation to indemnify ST Paper and it goes on
10 from there.

11 Do you see that, Mr. Tak?

12 A. Yes, yes.

13 Q. And it talks about different expenses
14 that ST Paper has alleged that are due. And
15 when did you become aware of these expenses that
16 are identified here?

17 A. We were aware of the expenses right
18 after ST Paper bought the mill until about two,
19 three, four years continuing.

20 Q. So you first became aware of these
21 expenses when ST Paper purchased the mill?

22 A. After ST Paper purchased the mill, ST
23 Paper paid a lot of liabilities of OFTI and the
24 deal was that all these liabilities would be
25 reimbursed by OFTI, but they were not so ST

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1 Paper kept, you know, putting these together and
2 this is combination of those expenses that were
3 incurred plus the liabilities that were paid
4 which belonged to OFTI.

5 Q. And so for the expenses that you have
6 listed here, do you have documentation of ST
7 Paper paying these expenses?

8 A. As I explained to you before, for two
9 year's time, from 2007 from the time we bought
10 until after about two years approximately, plus
11 or minus few months, we do not have any record
12 of these -- these different notes we paid
13 because these documents were kept at Mr. Van Den
14 Heuvel's office, but we have our own bank
15 payment records. So it is kind of difficult to
16 tie those payments records to the bills.

17 (Reporter requests clarification.)

18 A. To tie the payments to the invoices.

19 MS. CHUDEREWICZ: I will make a
20 request on the record for any documents that
21 evidence the payment of these expenses by ST
22 Paper and your attorney and I can discuss that
23 and what that means, sir. I believe that we've
24 already requested that as part of our discovery,
25 but if there's additional documents, I will

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1 discuss it with your attorney.

2 BY MS. CHUDEREWICZ:

3 Q. All right. Turning again, we looked at
4 this earlier, the demand letter that you sent to
5 ST Paper, LLC, or excuse me, that you sent to
6 Mr. Van Den Heuvel on February 9th, 2010, I
7 wanted to look at attachment 3 and these have to
8 do with charges that you -- or expenses that you
9 allege were made regarding a Yankee dryer.

10 Do you see that, sir?

11 A. Yes.

12 Q. How did you become aware that the dryer
13 was not working?

14 A. The clothes in the asset purchase
15 agreement that the dyer had been fixed and
16 working and then we found out that there was a
17 crack and it wasn't working properly and so we
18 had to get it fixed before it blew up, and
19 that's why we incurred these expenses. It's
20 already in the asset purchase agreement that
21 Mr. Van Den Heuvel would take care of it.

22 Q. How soon after the purchase of the mill
23 in April 2007 did you realize that the dryer was
24 not working properly?

25 A. It took our people some time to realize

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1 that it wasn't working properly. And I don't
2 know how long it took, but, yes, we realized it
3 sometime and then we had scheduled to get it
4 fixed.

5 Q. And what's being represented on this
6 attachment, number 3?

7 A. The expenses, what we included or
8 incurred in connection with Yankee dryer.

9 Q. Okay. So the first two items here are
10 expenses. Were they paid to these Voith Paper
11 Services, is that who ST Paper paid them to?

12 A. Yes.

13 Q. And the third expense is listed as down
14 time for 45 -- 44.5 hours.

15 What does that refer to?

16 A. That refer that mill was down for so
17 many hours and this is the money we would have
18 made if the mill were operational.

19 Q. So the mill couldn't -- was not in
20 operation at all, you couldn't do anything until
21 this dryer was fixed; is that -- is that
22 correct?

23 A. Mill was not operating when dryer was
24 being fixed.

25 Q. And the expenses that are related to

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1 this Voith Paper Services, do you have any
2 invoices related to those services?

3 A. As I mentioned, that the documents for
4 couple of years were not available to us. They
5 were kept at Mr. Van Den Heuvel's office and
6 never transferred to us.

7 Q. But these expenses --

8 A. But --

9 Q. I'm sorry, go on.

10 A. But we would -- we would see if we have
11 our bank records of payment that is referred
12 here.

13 Q. So my question is, I understand that
14 there were certain documents that you said were
15 at the OFTI offices and you didn't have access
16 to, but these expenses it looks like, according
17 to the reference line, occurred in 2008, which
18 is after you had purchased the mill, correct?

19 A. Yes.

20 Q. So my question is, does ST Paper have
21 invoices related to these repairs?

22 A. Let me recreate what I said. In the
23 first couple years all the records were kept at
24 Mr. Van Den Heuvel's office because of our
25 accountant was working in that facility and ST

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1 Paper was using his SAP system that the last
2 2000 or so, but all the records, invoices,
3 payments, everything was kept on that system.

4 When we parted the company, we moved our
5 offices to ST Paper mill's location and that SAP
6 system, those documents were not transferred, so
7 we do not have any documents for first two years
8 even though ST Paper owned and operated the
9 mill.

10 Q. Okay. And let's look at Exhibit -- or
11 attachment 2 to this letter. And we can make
12 the description larger because I know they are
13 quite small.

14 What is being described in this
15 attachment, what losses, claim losses are being
16 described?

17 A. The wastewater treatment plant upgrades
18 we had to do to comply with WDNR permit.

19 So Mr. Van Den Heuvel has presented that
20 all the permits are in place and everything is
21 operating perfectly to meet the requirements,
22 but then we realize -- we kept getting letters
23 from WDNR and we had to upgrade the systems in
24 order to comply with WDNR requirements.

25 Q. And describe for me what's being

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1 depicted in the column titled liquidated
2 damages.

3 A. There as I understand, liquidated
4 damages are damages that has been incurred,
5 ordering, and unliquidated are which are still
6 all ongoing.

7 Q. So for -- if we look down for what's
8 being described as C-1 incremental polymer costs
9 to induce settling. If we look here, it looks
10 like there was liquidated damages in the amount
11 of 180,500. So what is that your -- explain
12 what that is and what the unliquidated damages
13 of 9,500 mean.

14 A. Every month we were incurring additional
15 cost. So 180,500 is the cost incurred today
16 when this letter was sent and remainder is to be
17 incurred every month.

18 Q. Okay. So this number -- this liquidated
19 damages number was increasing at that point
20 every month, month over month, right, by
21 9,500?

22 A. That's correct. I don't know whether
23 this 9,500 is a monthly charge or yearly charge.

24 Q. I think that --

25 A. I'll have to go back and look at the

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1 document.

2 Q. If we go up a little bit, and we've made
3 it bigger just to see easily, but I think it's
4 monthly. See, it says month?

5 A. Okay. If it says monthly, then that's
6 what it is.

7 Q. Yeah. Okay. And is your response -- so
8 it looks like for these unliquidated damages it
9 looks like the start date for some of these are,
10 if we scroll over, from what we were just
11 looking at it looks like for that --

12 No, the other way, scroll over, go down.

13 Right.

14 So this first charge, it looks like it
15 started to incur in August of 2008. Is that
16 what that means, that reference to start date
17 August 2008?

18 A. I -- I -- I don't know. It might have
19 been in April of 2007. I would like to go back
20 and look at the document again. It has been a
21 long time since it was produced.

22 Q. And again, is this the same, the charges
23 that are here in this document, or excuse me, in
24 this attachment 2, is your testimony the same
25 that there wouldn't be any documentation related

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1 to these because you were still using the OFTI
2 system at the time that this was -- that these
3 were incurred?

4 A. These are the additional charges you are
5 paying to meet the requirements, which we should
6 be meeting according to Mr. Van Den Heuvel that
7 we do not have any violations of WDNR and we can
8 meet the requirements. These are additional
9 charges we are incurring. So my testimony is
10 our technical people think that we would be
11 spending that much less money if we were already
12 meeting the WDNR requirements.

13 Q. Right. And so what I'm saying is, in
14 terms of if we wanted to look at, to the
15 liquidated damages that are noted here in this
16 attachment 2, at the time this letter was sent,
17 if we scroll down, they were roughly -- it was
18 roughly 3.8 million dollars?

19 Do you see that? That's how much --

20 A. Yes.

21 Q. And so what I am asking, and I think I
22 know the answer, but I just want to make sure,
23 is would you have or does ST Paper have
24 documentation of the payment of these additional
25 penalties and costs to W -- what is it? WDNR?

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1 A. These payments were not made to WDNR,
2 these were not penalties. These were the extra
3 expenses we had to spend to be in compliance
4 with their requirements. If we did not spend
5 this money, we will be out of compliance and
6 WDNR could come and shut all the way down.

7

- - -

(Simultaneous discussion; reporter gives instruction.)

10

— — —

11

12 payments made to WDNR, I want you to understand
13 that.

14

BY MS. CHUDEREWICZ:

15

16 reflecting these expenses?

17 A. We have documents

17

17 A. We have documents for after -- about two
18 years we don't have anything, but after that
19 since we moved offices to our location, we have
20 all the payments we are making for buying the
21 chemicals and all that.

Now, how much extra we are paying, I
think we will have to go through each bill and
our technical people can tell you what
percentage of extra chemical -- chemicals had

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1 been used to stay in compliance.

2 Q. So is ST Paper alleging that they are
3 still incurring liquidated damages because they
4 have to pay additional expenses in order to keep
5 in compliance?

6 A. I would have to go back and check.

7 Either we have modified the mill that we are not
8 incurring or we still might be incurring if we
9 didn't have enough capital expenditure to
10 correct these problems.

11 So my answer is I cannot tell you right
12 now whether we are still incurring additional
13 expense or not.

14 By the way, this whole thing is in
15 litigation in -- in -- so these expenses will be
16 sorted out in due course of time.

17 - - -

18 (Technical difficulties; reporter
19 gives instruction.)

20 - - -

21 MS. CHUDEREWICZ: Oh, okay.

22 BY MS. CHUDEREWICZ:

23 Q. So according to your testimony, I
24 believe that you stated that you needed to incur
25 these extra expenses in order that you would not

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1 be out of compliance; is that correct?

2 A. Yes.

3 Q. And how do you know that? Did you
4 receive letters? Do you receive letters saying
5 that you are in compliance or how do you know?

6 A. We have issued letters from WDNR that we
7 have exceeded these limits from time to time and
8 now we are to report to them some requirements
9 are monthly, some are quarterly, yearly basis
10 and we have to make sure that we don't exceed
11 any of those things.

12 So by expending this extra money, we
13 assure that we don't violate any of the
14 requirements.

15 Q. I don't believe that we have those
16 letters, so I'm going to make a request for them
17 on the record, those compliance records --
18 letters.

19 So we have been talking about your two
20 thousand -- your February 9th, 2010, letter.
21 Now I would like to show you a document that I
22 will mark as Exhibit 33 -- 30. 30, I'm sorry.

23 - - -

24 (Whereupon, Exhibit 30 was marked for
25 identification.)

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1

- - -

2 BY MS. CHUDEREWICZ:

3 Q. And this is a letter, it's to you, and
4 if you look on the second page, it's from
5 Mr. Van Den Heuvel.

6 Do you recognize this document?

7 A. Yes.

8 Q. In the first paragraph Mr. Van Den
9 Heuvel states that he is in receipt of your
10 correspondence dated February 9, 2010, and he's
11 replying to that letter on behalf of a number of
12 entities, Tissue Products Technology, Partners
13 Concept Development, and Oconto Falls Tissue.

14 Do you see that?

15 A. Yes.

16 Q. And when did you receive this letter?

17 A. I must have received on the day he sent
18 it or a day after that. I don't exactly recall
19 when did I get it.

20 Q. Do you recall if you received it soon
21 after you sent your February 9th, 2010,
22 letter?

23 A. I think I might have received it either
24 by email or fax and then we also got in FedEx.

25 Q. And do you remember when that

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1 occurred?

2 A. I think look at the date of it and then
3 I can tell you approximately when I signed.

4 Q. I'm asking you because I don't see a
5 date on the letter, so that's why I wanted to
6 know.

7 A. Then I think it should be few days after
8 my letter was sent to Mr. Van Den Heuvel.

9 Q. Okay. And what did you understand this
10 letter to be conveying to you?

11 A. I guess this letter, to me, was
12 worthless, so I did not consider much of it.

13 Q. And why did you think it was
14 worthless?

15 A. Because it's talking about this loan and
16 that loan and all kinds of things, never
17 answering what my claim was. I did not think I
18 should get into spitting match with him.

19 Q. And under number 1, he -- he states that
20 he was not going to pay the expenses you request
21 because the buyer did not fund his 20 million
22 dollars of equity at closing.

23 Do you see that?

24 A. Yes, I see it.

25 Q. But earlier I believe you told me that

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1 you did fund the 20 million in equity,
2 correct?

3 A. Correct.

4 Q. Also in this section, he refers to
5 attached documentation. Do you see that?

6 "The senior lending group has been
7 notified of this funding misrepresentation and
8 they have chosen to ignore it"?

9 A. Yes.

10 Q. Do you have a copy of that
11 documentation?

12 A. I have whatever was attached to it,
13 nothing more.

14 Q. The copy that we've had produced to us
15 had nothing attached to it, which is why I was
16 asking you if you remembered anything being
17 attached to this letter.

18 A. I don't know. I would have to go and
19 check back whether we still have it or we don't
20 have it anymore.

21 Q. Okay. I will make a request on the
22 record for that, if there is anything.

23 And then under number 2, on the second
24 page, Mr. Van Den Heuvel states that the -- he
25 claims that the environmental issues were caused

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1 the payment had been made, the repayment had
2 been made?

3 A. Entity who made the note, which is ST
4 Paper and entities that hold the note.

5 Q. Right. So of those --

6 A. So if it's paid, then it will be
7 recorded in the books of ST Paper that it has
8 been paid and there would be documentation.

9 Q. So for the -- taking for example the ST
10 to ST Holdings note, that note, is it possible
11 for ST Holdings to again refinance the note?

12 A. ST Holdings is the signer of the note.
13 ST Paper is the one if ST Holdings sells it to
14 someone else or refinance it, I don't know what
15 will happen, but note is due from ST Paper and
16 ST Paper Holdings. And when ST Paper has the
17 money, it will pay off the note.

18 Q. But can ST Holdings refinance the
19 note?

20 A. I don't know.

21 Q. Who would know that?

22 A. We will defer to our lawyers and we like
23 to see why ST Holdings will refinance and under
24 what circumstances.

25 Q. I didn't get the last part of the

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1 answer.

2 A. Under -- why ST Holdings will refinance
3 and under what circumstances it will refi so we
4 will have to wait and see.

5 Q. And what do you have to wait and see
6 for? What is the --

7 A. Because right now ST Holdings is not
8 refinancing it.

9 Q. But could it?

10 A. I don't know the answer.

11 Q. And is that something that you'd have to
12 talk to, I think before you said your lawyers
13 about?

14 A. As I said, if there's a need, when the
15 need arise, and if the need arise, then we will
16 talk to the lawyers.

17 If there is no problem, then what's the
18 point of talking about.

19 Q. So when the loan comes due, could there
20 be a conversation with the lawyers at that time
21 about refinancing again?

22 A. If it was paid by the time it comes due,
23 then there will be no need.

24 Q. But if it's not paid by the time this
25 comes due, then there could be a need; is that